

Files of the Office of Inspector General,” “Name Indices System of the Office of Inspector General,” and “Autoinvestigation of the Office of Inspector General” consist in part of investigatory material compiled by the OIG for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Therefore, to the extent that information in these systems fall within the coverage of exemption (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), these systems of records are exempt from the requirements of subsection (d)(1), because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

[57 FR 62142, Dec. 29, 1992, as amended at 65 FR 50904, Aug. 21, 2000]

## **PART 2004—PRODUCTION IN RESPONSE TO SUBPOENAS OR DEMANDS OF COURTS OR OTHER AUTHORITIES**

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**AUTHORITY:** Inspector General Act of 1978, as amended (5 U.S.C. app.); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)), unless otherwise noted.

**SOURCE:** 49 FR 11168, Mar. 26, 1984, unless otherwise noted.

### **§ 2004.1 Purpose and scope.**

This part contains provisions for service of a subpoena issued by the In-

spector General and procedures with regard to demands of courts or other authorities for Office of Inspector General (OIG) documents or testimony by employees of the OIG. For purposes of this part, the term “employees of the Office of Inspector General” includes all officers and employees of the United States appointed by, or subject to the supervision of, the Inspector General.

[57 FR 2228, Jan. 21, 1992]

### **§ 2004.2 Service of an Inspector General subpoena.**

Service of a subpoena issued by the Inspector General may be accomplished as follows:

(a) *Personal service.* Service may be made by delivering the subpoena to the person to whom it is addressed. If the subpoena is addressed to a corporation or other business entity, it may be served upon an employee of the corporation or entity. Service made to an employee, agent or legal representative of the addressee shall constitute service upon the addressee.

(b) *Service by mail.* Service may also be made by mailing the subpoena, certified mail—return receipt requested, to the addressee at his or her last known business or personal address.

[57 FR 2228, Jan. 21, 1992]

### **§ 2004.3 Production or disclosure prohibited unless approved by the Inspector General.**

(a) The rules and procedures in paragraphs (b) and (c) of this section shall be followed when a subpoena, order or other demand (hereinafter referred to as a “demand”) of a court or other authority is issued for the production of documents or disclosure of testimony concerning:

(1) Any material contained in the files of the Office of Inspector General;

(2) Any information relating to material contained in the files of the Office of Inspector General; or

(3) Any information or material which an individual acquired while an employee of the Office of Inspector General as a part of the performance of official duties or because of his or her official status.

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(b) Without prior approval of the Inspector General, no employee or former employee of the Office of Inspector General shall, in response to a demand of a court or other authority, produce any material contained in the files of the Office of Inspector General, or disclose any information relating to material contained in the files of the Office of Inspector General, or disclose any information or produce any material acquired as a part of the performance of official duties or because of official status.

(c) With regard to a request for testimony of a present or former OIG employee as an expert or opinion witness, the employee may not be called to testify as an expert or opinion witness by any party other than the United States.

[57 FR 2228, Jan. 21, 1992]

### **§ 2004.5 Procedure in the event of a demand for production or disclosure.**

(a) Whenever a demand is made upon an employee or former employee of the Office of Inspector General for the production of material or the disclosure of information described in § 2004.1, he or she shall notify immediately the Inspector General and the Office of General Counsel. If possible, the Inspector General shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If oral testimony is sought by the demand, the party seeking testimony, or his or her attorney, must furnish to the Inspector General an affidavit, or if that is not feasible, a statement set-

ting forth a summary of the testimony desired.

(c) If response to the demand is required before the instructions from the Inspector General are received, the United States Attorney, or such other attorney as may be designated for the purpose, will appear with the individual upon whom the demand has been made. The attorney will furnish the court or other authority with a copy of the regulations contained in this part and will inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the Inspector General. The court or other authority shall be respectfully requested to stay the demand pending receipt of the requested instructions from the Inspector General.

[49 FR 11168, Mar. 26, 1984]

### **§ 2004.7 Procedure in the event of an adverse ruling.**

If the court or other authority declines to stay the effect of the demand in response to a request by the Inspector General made in accordance with § 2004.5(c), or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Inspector General not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand *United States ex rel. Touhy v. Ragen*, 340 U.S. 462).

[49 FR 11168, Mar. 26, 1984, as amended at 57 FR 2229, Jan. 21, 1992]